

**If ever there was** a person who managed to parlay adversity into opportunity, that person has to be Calvin Duncan. Wrongfully convicted on Jan. 29, 1985, of first-degree murder of David Yeager during an August 7, 1981, robbery, Duncan, following his exoneration, would be instrumental in helping attorneys formulate a successful challenge to Louisiana's use of non-unanimous jury verdicts. He would go to graduate from Tulane University and Lewis & Clark Law School in Oregon, and be admitted to the Oregon bar.

Along the way, he would be forced to overcome the suppression of exculpatory evidence by then-Assistant District Attorney Leon Cannizzaro, a hostile judge who erected obstacles for his defense counsel, and a corrupt Oregon police officer who lied to Duncan during questioning following his arrest in that state. Lt. Roy Reed of the Clackamas County, Ore., Sheriff's Office, would, six months after the Aug. 6, 1982, arrest, plead guilty in federal court to a single count of wiretapping in an unrelated case.

Duncan's unlikely story began shortly after 11:30 p.m. on Aug. 7, 1981, when twenty-three-year-old David Yeager was shot to death during a robbery in New Orleans. Kristi Emberling, Yeager's girlfriend, told police that two young black men approached the couple at a bus stop and asked if they wanted to purchase some marijuana. The declined and one of the men pulled a gun.

Yeager struggled with the gunman and Emberling heard shots fired. Yeager fell and one of the men began going through Yeager's pockets and removed his wallet before both fled. Emberling described one of the robbers as about five-foot-ten-inches in height and the other about five-foot-six and both between fifteen and twenty-five years of age. In a second statement, she said the gunman was black, with a mustache. She said he wore a knit winter cap and a leather or vinyl jacket. In her initial description, she said the gunman wore a sun visor, and not a knit cap.

The investigation stalled for several months before the police department highlighted the case through its Crime Stoppers program on Feb. 15, 1982. Three days later, police received a tip naming eighteen-year-old Calvin Duncan as the perpetrator. A four-year-old mugshot of Duncan from a prior juvenile arrest was located and included in a photo lineup shown to Emberling on March 7. Detective Marco Demma wrote in his report that Emberling identified Duncan as "the one who shot David."

When asked if she was positive, she said she wasn't sure and that she was scared, Demma wrote in his report. An hour later, she told

Demma she was certain of her identification of Duncan. An arrest warrant was issued the next day.

On July 23, 1982, nearly a year after the murder, police received a second tip from a female who said she had received a letter from Duncan who was by then working for the Job Corps in Clackamas County, Oregon under the name Cavin Jones.

On Aug. 6, one day before the first anniversary of the crime, Lt. Roy Reed and Det. Loren Peterson of the Clackamas County Sheriff's Office arrested Duncan at work in the town of Estacada. Duncan denied any knowledge of the murder. He said he had hitchhiked out west to join the Job Corps after learning that he was a suspect, learn a trade, stay out of trouble, and save some money to retain an attorney should he be arrested. Two days later, while awaiting extradition to Louisiana, Duncan gave a second statement in which he said he was afraid he would not get a fair trial in Louisiana.

He was asked about his earlier statement that he knew the female witness to the shooting was white, he was quoted in Reed's report as saying that "it had to be a white woman or else they wouldn't have kept working on the case so long." Reed lied to Duncan in saying that he was identified in part based on his prominent gold front teeth.

On Oct. 8, Duncan's attorney filed a formal request asking the Orleans Parish District Attorney's office to turn over any exculpatory evidence in the case. A month later, Assistant DA Leon Cannizzaro lied when he wrote, "The state has no exculpatory evidence."

On Aug. 15, 1983, Reed pled guilty in federal court to a single count of wiretapping in an unrelated case in Oregon and received five years' probation. Reed had illegally installed a transmitter on the phone of a Clackamas County commissioner in the belief he was corrupt. He said Peterson had been present during preliminary discussions on how to surveil the official but had not taken part in the installation of the bug.

On Feb. 2, 1984, assistant prosecutor Bruce Whittaker wrote that there were problems with the Duncan case. He recommended that prosecutors attempt to cut a deal and convince Duncan to plead guilty to second-degree murder. He cited the tentativeness of Emberling's initial identification as being problematic. "Although she states the tentativeness was due to her understandable fear, the fact remains that the identification was seriously damaged for trial," Whittaker wrote. "Reed's inextricable involvement in all statements and his subsequent conviction would present serious problems in a jury trial," he added. "In response to a defense discovery request, the state informed the defense that none of its witnesses had a conviction record. In light of our continuing duty [to provide exculpatory evidence], such answer is no

longer sufficient.”

Prior to the start of Duncan’s trial, his attorney, appointed through the Orleans Indigent Defenders Program, requested that Judge Frank Shea authorize funds to secure the testimony of an expert on mistaken witness identification.

Judge Shea’s was at once hostile and indifferent to the rights of an accused to a fair trial. He refused the request, saying “[If] you think every time I have a murder case, I am going to have this expert come down because of the identification question, you are in the wrong court.”

At trial, Emberling testified that Duncan was the killer despite Duncan’s being neither light-skinned nor stocky as she had described the gunman in initial police reports. Without having the police reports, Duncan’s attorney was in no position to challenge her on her inconsistencies. She also revealed Reed’s lie when she testified that she had not noticed the gunman’s having any gold teeth. Demma testified that Emberling never hesitated in her identification of Duncan, which was yet another misrepresentation of the facts. He also testified falsely that the first caller to Crime Stoppers had expressed no interest in the thousand-dollar reward money. Demma also lied under oath when he testified that his principal contact in Clackamas County, Oregon, deliberately minimizing the by-then-convicted-felon Reed’s role

Prosecutors also were not above bending the truth, as evidenced by closing arguments in which Emberling was described as strong and consistent in her identification of Duncan.

He was convicted of first-degree murder on Jan. 29, 1985 and was sentenced to life imprisonment without parole. He immediately appealed the verdict, noting that among other things, Judge Shea had erred when he refused to allow Duncan’s attorney to examine a supplemental report that Peterson had used to refresh his memory during testimony.

The conviction was affirmed on Dec. 15, 1987, and over the next seventeen years, Duncan filed a series of pro se motions and with money

he raised in part from selling his plasma in prison, he hired an investigator who then took his money without performing any work.

As one appeal after another was denied, hope began fading for Duncan until the Innocence Project New Orleans took up his case in 2004 and began filing public records requests for documents from police and prosecutors.

Duncan's attorneys found numerous other communications and reports that had been withheld at Duncan's trial. They eventually were able to force release of exculpatory evidence and reports that conflicted with trial testimony by witnesses as well as misconduct by Reed and potential misconduct by a second Oregon deputy sheriff, Loren Peterson. Finally, on Jan. 7, 2011, he pled guilty to manslaughter and attempted armed robbery, received a sentence of forty-nine years, and was released on time served, a favorite tactic employed by prosecutors as a hedge against any legal claims against police, prosecutor or judicial misconduct.

In 2021, the Louisiana Legislature enacted a new law that allowed persons who had pled guilty to challenge their convictions if they had evidence of innocence that was never presented in court. The law took effect on Aug. 1, 2021, and a week before it went into effect, Duncan's attorneys filed a motion to vacate his conviction, claiming that Duncan never was given the opportunity to present his evidence of innocence in court and that he took the plea deal as the most expeditious path to release from prison after thirty-eight years behind bars.

Duncan, who following his release, played a critical role in assisting attorneys to gather evidence and frame arguments for a challenge to Louisiana's use of non-unanimous juries. Ironically, Louisiana and Oregon were the only state that continued to recognize such verdicts. The U.S. Supreme Court in 2020 barred such verdicts. Duncan, meanwhile, had enrolled in and graduated from Tulane University in New Orleans in 2018 and then attended Lewis & Clark Law School in Portland, Ore., said that if his conviction for manslaughter and attempted armed robbery were allowed to stand, it would prevent his admission to the bar after his graduation from law school.

His conviction was finally vacated by Judge Nandi Campbell on Aug. 3, 2021. In her ruling, she wrote, "Given the state's prior suppression of evidence relating to the Oregon officers' possible criminal activity, the inconsistencies of the ...eyewitness identification

and Mr. Duncan's extensive service and numerous contributions to the community post-release, the sentence imposed on Jan. 7, 2011, is unconstitutionally excessive." Following her ruling, the state dismissed all charges against Duncan.